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SUBJECT: PAYING HEED TO BUSINESS CONCERNS, VIETNAM OPENS THE DOOR
WIDER ON FOREIGN DISTRIBUTION

REF: A) 07 Hanoi 1616 ("Some Commitments Are Harder");
B) Hanoi 358 ("TIFA Meetings")

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11. (SBU) Summary: Hoping to put to rest one of the most controversial WTO-implementing regulations to date, the Government of Vietnam (GVN) will further open its distribution sector ahead of schedule and allow foreign-invested businesses in Vietnam to sell imported goods directly to multiple distributors. The new rules, which become effective on April 29, will amend the previous regulation which limited foreign-invested businesses to sell imported goods in-country to a single distributor. In the nick of time, Mission Vietnam enlisted the AmChams and the EU to help lobby the GVN to simplify its amendments prior to issuing the final version. End summary.

DISTRIBUTION SECTOR OPENS WIDER AND EARLIER

12. (U) On April 14, the GVN announced that it had finally discarded its controversial July 2007 regulations (known as "Circular 9") that limited the sale of imported goods by foreign-invested businesses to one distributor per shipment. (Note: The term "foreign-invested" refers to non-Vietnamese businesses registered to do business and with a commercial presence in Vietnam.) The restriction was the source of much controversy, and many in the international and business communities feared at first that it posed restrictions on existing importing (or trading) rights (REF A). Eventually, and after substantial discussions, the GVN demonstrated that the regulations were meant to be as liberal as possible for foreign firms seeking to sell imported goods inside Vietnam while protecting the short transition period for full foreign participation in the distribution sector negotiated under the WTO services schedule, and were not intended to curtail existing trading rights.

A MISUNDERSTOOD AND UNLOVED EXPERIMENT

13. (U) According to this interpretation, Circular 9 allowed foreign-invested businesses in Vietnam which did not otherwise have the right to conduct sales inside the country, to import goods, take possession of them and look for a buyer in Vietnam -- in essence an exercise of distribution rights that Vietnam was not obligated to extend until 2008 for joint ventures and 2009 for fully foreign-owned businesses. Circular 9, however, imposed a

significant restriction on these sales in order to protect against de facto full participation of foreign businesses in the distribution services sector. For those foreign-invested companies seeking to conduct in-country sales of imported products, Circular 9 restricted them to sell to only one distributor per category of goods per import shipment.

¶4. (SBU) Many foreign businesses complained that they had no available distributors, and wanted to be able to sell directly to multiple buyers or end-users. Others misunderstood the regulation to apply to trading rights, and thus claimed that Circular 9 restricted their ability to act as importer of record for multiple buyers. Some businesses demanded full distribution rights immediately, regardless of the WTO schedule of commitments. In practice, however, the GVN allowed many exemptions from these restrictions and, even before this new amendment to Circular 9, provided dozens of waivers to U.S. firms to conduct a broad range of distribution activities above what is currently required under WTO commitments.

THE NEW RULES

¶5. (U) Under the new rules, the GVN continues to allow limited distribution rights to 100 percent foreign-owned firms (joint ventures gained these rights in January 2008). Gone is the much-hated "one distributor" restriction, but it appears that foreign-invested firms must still sell the goods that they import directly to distributors, and neither distribute those goods themselves nor sell them directly to end-users. The restriction on direct distribution activities does not appear to trouble any of the 100 percent U.S.-owned businesses with which we have spoken, but the Embassy knows of businesses that want to be able to sell to end-users directly either because there is no established distribution network (e.g. chemicals) or their end-users are

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commercial / industrial operations (e.g. robotics and machinery). It appears that the GVN will continue to entertain waivers to end-user sales until the sector opens completely in 2009, and Mission Vietnam will continue to engage with the GVN to promote the most liberal application possible of existing regulations.

¶6. (U) The new amendment to Circular 9 also includes a reporting requirement calling on all foreign businesses that avail themselves of the limited distribution rights but have no distribution license (either because they are fully foreign-owned or for other reasons) to report quarterly to the Ministry of Industry and Trade (MOIT) on their in-country sales. The notification requirement does not apply to firms with distribution licenses, so we anticipate MOIT will phase it out after the sector opens fully in 2009.

TRIMMING AWAY FURTHER CONFUSION

¶7. (SBU) In the second week of April, the GVN shared with Embassy Hanoi a draft revision of Circular 9 that it had intended to issue "immediately." MOIT had shared the general outline of its plans for revisions with the private sector at two USAID-sponsored workshops in HCMC and Hanoi in late March (REF B), but we noted that the proposed amendments were much more complex than anyone had anticipated. The initial draft created a convoluted mechanism to keep foreign businesses from acting as their own distributors or being able to sell to end-users directly, and set up what seemed like onerous reporting requirements on all importing activities.

¶8. (SBU) Working with Congen HCMC, we notified the Hanoi and HCMC AmChams, and asked them to contact the drafters directly to persuade them not to issue the draft until all stakeholders had a chance to weigh in. After consulting with the Department and USTR, Embassy Econoff met with the MOIT drafters on April 10 to explain U.S. concerns and included our EU counterparts in the discussion, as they have also been actively lobbying Vietnam to simplify its distribution and trading rights regulations.

¶9. (SBU) After hearing our concerns, the MOIT drafters told us later

that day that the amendments to Circular 9 would be cut by about two thirds to eliminate the convoluted separation scheme and reporting requirements. The GVN told us, however, that it wanted to still go ahead and issue the draft at the earliest. The Chairman of the Hanoi AmCham told us that the amended Circular 9 was "very good" and "meets all of our basic requirements," while our EU counterpart reported that the Eurocham was also pleased with the resulting draft.

COMMENT: WHAT IS THE GVN TRYING TO DO?

10. (SBU) The MOIT has told us in private that many in the GVN fear a stampede by foreign businesses into the retail sector (which is included in distribution rights) and/or foreign domination of Vietnam's domestic distribution networks. Other well-placed contacts tell us that the leadership's anxiety at the rising trade deficit (\$12.4 billion last year and already at \$7.3 billion in the first quarter of 2008) makes it reluctant to facilitate the flow of imports any sooner than Vietnam must. Pushing in the other direction is the camp that wants to remain competitive at attracting foreign investment and improving the overall business climate. Support for their efforts from the international and the business community strengthens their hand, and in this occasion, seems to have carried the day.

MICHALAK